

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ZapFraud, Inc.

Plaintiff,

v.

Proofpoint, Inc.

Defendant.

C.A. No. 19-cv-1691-CFC

JURY TRIAL DEMANDED

**PLAINTIFF ZAPFRAUD, INC.’S UNOPPOSED MOTION FOR LEAVE TO
FILE A SECOND AMENDED COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 15 and Delaware District Court Local Rules 7.1.1, 7.1.2, and 15.1, Plaintiff ZapFraud, Inc. (“ZapFraud”) moves to file a Second Amended Complaint in the above-captioned action. The Second Amended Complaint adds a count of infringement for a newly-issued patent, which is a continuation of the current patent-in-suit. ZapFraud has conferred with defendant Proofpoint, Inc. (“Proofpoint”), and defendant does not oppose this amendment. Further, ZapFraud and Proofpoint agree that Proofpoint shall have twenty-eight (28) days to respond to the Second Amended Complaint.

For reasons set forth below, ZapFraud respectfully requests that the court grant this motion:

1. Rule 15(a) provides that leave to amend shall be freely given “when justice so requires.” Fed. R. Civ. P. 15(a)(2). “Leave to amend must generally be granted unless equitable considerations render it otherwise unjust.” *Arthur v. Maersk, Inc.*, 434 F.3d 196, 204 (3d Cir. 2006) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

2. ZapFraud files this motion timely with no undue delay. The current action concerns ZapFraud’s patent infringement claim with respect to U.S. Patent No. 10,277,628 (the ’628 patent). ZapFraud seeks leave to add a claim of patent infringement with respect to a newly issued patent, U.S. Patent No. 10,609,073 (the ’073 patent), a patent within the same family as the ’628 patent. The Patent Office issued the ’073 patent on March 31, 2020.

3. ZapFraud’s proposed Second Amended Complaint would not unfairly prejudice the defendants. There is no scheduling order in this case, and no discovery served or produced. Moreover, the new infringement claim does not substantially change the scope of the case. The new patent is a continuation of the ’628 patent that is the subject of the infringement claim in the First Amended Complaint, and ZapFraud accuses the same products of infringing the new patent for substantially the same reason as the ’628 patent.

4. ZapFraud does not seek to amend the complaint in bad faith or as a result of any dilatory motive or other improper purpose.

5. ZapFraud has made a reasonable effort to reach agreement with the defendant, and counsel for defendant has indicated that they will not oppose this motion. Parties agree that the defendant's pending motion to dismiss the First Amended Complaint for failure to state a claim (D.I. 12) shall be deemed moot, and the defendant shall re-file its motion in response to the Second Amended Complaint.

A proposed order granting this motion is attached hereto as Exhibit 3, as are a copy of the Second Amended Complaint (attached hereto as Exhibit 1) and a marked-up version of the Second Amended Complaint (attached as Exhibit 2) showing the changes from the First Amended Complaint.

For the foregoing reasons and in the interest of justice, ZapFraud respectfully requests the Court grant the above motion.

Dated: April 23, 2020

Respectfully submitted,

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